

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

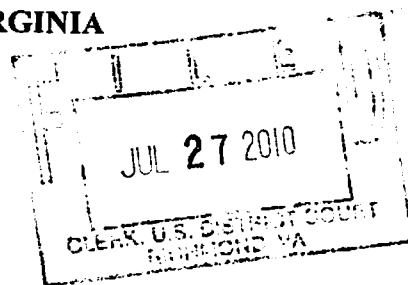
MARVIN T. BROYHILL, III,  
Individually and on Behalf of the  
Broyhill Trust and Personal Trust,  
And the Estate of Audrey Broyhill,

Plaintiff,

v.

BANK OF AMERICA, N.A.

Defendant.



Civil Action No. 3:10CV522  
(REP)

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Bank of America, N.A. (the "Bank"), by counsel, hereby removes this action from the Circuit Court of the City of Richmond, Virginia to the United States District Court for the Eastern District of Virginia, Richmond Division. Removal is proper because this Court has federal diversity jurisdiction pursuant to 28 U.S.C. § 1332.

**STATEMENT OF GROUNDS OF REMOVAL**

**I. Background**

1. On or about January 7, 2010, Plaintiff Marvin T. Broyhill filed a Complaint (hereinafter "Complaint") against the Bank in the Circuit Court of the City of Richmond, Virginia. A copy of the Complaint and other pleadings filed in state court are attached hereto as **Exhibit A**. This action arises out of Plaintiff's claims that the Bank mismanaged two trusts and an estate and breached its fiduciary duties. Plaintiff seeks \$2,500,000.00 in compensatory damages, punitive damages "in the maximum amount allowed by law," costs and attorneys' fees, pre- and post-judgment interest, and an equitable accounting.

2. Service was effected on the Bank on July 6, 2010. Accordingly, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

3. In his Complaint, Plaintiff attempts to assert the following causes of action against the Bank:

- a. COUNT ONE: Breach of Fiduciary Duty (Compl., ¶¶ 42-46);
- b. COUNT TWO: Constructive Fraud (Compl., ¶¶ 47-49);
- c. COUNT THREE: Negligence (Compl., ¶¶ 50-53);
- d. COUNT FOUR: Breach of Contract (Compl., ¶¶ 54-56);
- e. COUNT FIVE: Conversion (Compl., ¶¶ 57-60); and
- f. COUNT SIX: Accounting, Surcharge and Falsification (Compl., ¶¶ 61-64).

4. The Bank denies the allegations in the Complaint, denies that Plaintiff has stated a claim for which relief may be granted, and denies that Plaintiff has been damaged in any manner. Nevertheless, assuming, for jurisdictional purposes only, that Plaintiff's claims are valid, he could have originally filed his Complaint in this Court under diversity jurisdiction. Removal of this entire case is therefore proper under 28 U.S.C. § 1441.

## **II. This Court has Diversity Jurisdiction.**

1. Based on allegations in Plaintiff's Complaint, Plaintiff is, and was at the time of the commencement of this action, a resident of the Commonwealth of Virginia. (Compl., ¶ 1).

2. The Bank is a federally chartered bank with its principal place of business located in the State of North Carolina. (Compl., ¶ 2).

3. Complete diversity exists between the proper parties pursuant to 28 U.S.C. § 1332.

4. Plaintiff seeks \$2,500,000.00 in compensatory damages, punitive damages “in the maximum amount allowed by law,” costs and attorneys’ fees, pre- and post-judgment interest, and an equitable accounting. (Compl., Prayer for Relief, page 13). Thus, the Complaint places in controversy an amount in excess of \$75,000.00, exclusive of costs and interest.

### III. Venue

5. Venue is proper in this Court because this district and division encompass the Circuit Court of the City of Richmond, Virginia, the forum from which the case has been removed. *See* 28 U.S.C. § 1441.

### IV. Notice

6. Concurrent with the filing of this Notice, the Bank will file a copy of this Notice of Removal with the Clerk of the Circuit Court of the City of Richmond, Virginia, a copy of which is attached hereto as **Exhibit B**.

WHEREFORE, Defendant Bank of America, N.A., by counsel, hereby removes this action to this Court.

**BANK OF AMERICA, N.A.**

By: 

Of Counsel

David N. Anthony, Esq.  
Virginia State Bar No. 31696  
Jon S. Hubbard, Esquire  
Virginia State Bar No. 71089  
Timothy J. St. George  
Virginia State Bar No. 77349  
TROUTMAN SANDERS LLP  
1001 Haxall Point  
P.O. Box 1122  
Richmond, Virginia 23218-1122  
Telephone: (804) 697-5410  
Facsimile: (804) 698-5118  
Email: [david.anthony@troutmansanders.com](mailto:david.anthony@troutmansanders.com)  
Email: [jon.hubbard@troutmansanders.com](mailto:jon.hubbard@troutmansanders.com)  
Email: [tim.stgeorge@troutmansanders.com](mailto:tim.stgeorge@troutmansanders.com)

*Counsel for Defendant Bank of America, N.A.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of July, 2010, a true and correct copy of the foregoing Notice of Removal was sent via regular U. S. Mail, postage prepaid, to the following:

Steven S. Biss, Esquire  
300 West Main Street, Suite 102  
Charlottesville, VA 22903  
(804) 501-8272  
Facsimile: (202) 318-4098  
Email: [stevenbiss@earthlink.net](mailto:stevenbiss@earthlink.net)

*Counsel for Plaintiff*



Jon S. Hubbard, Esquire  
Virginia State Bar No. 71089  
TROUTMAN SANDERS LLP  
1001 Haxall Point  
P.O. Box 1122  
Richmond, Virginia 23218-1122  
Telephone: (804) 697-5410  
Facsimile: (804) 698-5118  
Email: [jon.hubbard@troutmansanders.com](mailto:jon.hubbard@troutmansanders.com)

*Counsel for Defendant Bank of America, N.A.*